



## Still Part of the Family

*How divorce and or termination of a domestic relationship affects a child's legal relationship with grandparents, uncles, aunts, cousins and other important family members.*

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Today, Moms, dads, grandparents, siblings, stepsiblings, aunts, uncles, significant others, and kids may have the misfortune of experiencing the dysfunction of a family embroiled in divorce, legal separation, out of wedlock situation or domestic relationship breakup. Once-close families are sometimes pulled apart because of these real-life dramas. This emotional rollercoaster often makes people lash out in frustration, rather than respond with kindness and logic. The result is that children's extended family members, including, in some family units, same-sex partners who have maintained close relationships with the children, get ignored.

Children bond with adults who care for and about them, especially adults who take on caretaking roles within the family. When conflict arises in a divorce or separation, society and the courts must deal with the problem. However, children go on loving and trusting those they have counted on to provide parental love, affection, guidance, and the necessities of life. They trust adults who give them unconditional love and support. When those adults are removed because of adult breakups, the children are the victims.

Today, most, but not all, states recognize the rights of some third parties to maintain contact with children in specific circumstances, such as death, divorce, or when children are born out of wedlock. There are no uniform laws that govern this area. Each individual state decides which laws will apply to its citizens. Most state laws favor decisions made by "fit" parents regarding whether any third party, defined as—grandparents, stepparents, siblings, and significant others--will be allowed to see the children.

## **Grandparents are a special case**

Many states do, however, have specific state laws addressing the request of grandparents, specifically, who have been denied access to a grandchild. Those laws set forth specific requirements that must be followed and standards for the court to decide as well as the burden of proof required for a grandparent to overcome a fit parent's denial of visitation or contact. Most state laws do not address requests or concerns of stepparents, siblings, significant others, or same-sex partners. New laws will be required to address those requests.

Where laws do exist or in the absence of such laws and in the hope of trying to avoid litigation, some of these disputes can be resolved before they get so out of hand that lawyers and the courts must get involved. First, if possible, attempt to diffuse problems within the family. This can be done through calm, reasoned telephone or written communication. Face-to-face meetings also may be helpful. Avoid confrontational and accusatory statements. Remember, when accusations are involved, the listener will focus on how to respond and defend, rather than on what you are saying.

Second, respect each other's right to think and feel differently. You are not likely to change the other person's beliefs. Recognize that each of us may have feelings others do not understand or agree with, but we can acknowledge each other's feelings and confirm that we understand what they are saying. You may even want to come to an understanding that you may never agree completely, but that you can resolve your dispute by agreeing to disagree. It is important always to acknowledge what the other person feels, thinks, and believes so that he or she feels heard and knows that you care about them, even if you disagree with their position.

Third, try to find common ground. Remember, you both love the child or grandchild. It is imperative to keep in mind that the best interests of the child, not necessarily the interests of the adults, should control. This will require adults to sometimes put the needs of their children and grandchildren before their own needs. For grandparents, this means remembering that they are the grandparents, not the parents. The role of grandparents is different from parents and their rights and responsibilities are different. Grandparents must not allow grandchildren to be placed in the middle of a conflict between themselves and the grandchildren's parents. If that occurs, most judges will choose the parents, even if the grandparents are right. Never lose sight of what is to be accomplished and what goal is to be achieved.

Fourth, consider using a behavioral science specialist or trained family counselor (i.e., social worker, psychologist, psychiatrist, or clergy) to serve as a neutral moderator in meetings between the adults to talk through and resolve family problems. Resolutions reached may help reunite families or at least avoid and minimize destructive battles that can scar everyone.

Fifth, put yourself in the other person's place. Try to imagine what it would feel like to be the other party to your dispute. If you are a custodial parent, consider how your former spouse, a grandparent, or significant other must feel being separated from the child or children with whom they have had a close and loving relationship. If you are not allowing your children to see or visit with those who were once very close and special people in your life and the life of your child, what do you think that loss feels like? What if the situation were reversed and you were the one being denied access? What would you want to happen? What would you think should occur?

Sixth, if you are unable to resolve your dispute and legal counsel is required, find an attorney who has a background and experience in Family Law. Family Law is a unique and very specialized area of practice. Attorneys who handle personal injury, criminal, real estate, business/corporate or probate matters are very important and will have an impact on their clients' cases and on their businesses. But attorneys who practice Family Law, especially cases involving children, will have an impact on the immediate family and possibly generations of the family to come.

### **Seek family law experience**

Attorneys who belong to a state bar Family Law section, the American Bar Association Section of Family Law, the American Academy of Matrimonial Lawyers (AAML), and the American College of Family Trial Lawyers attend special continuing legal education classes and are best able to keep up to date with the complex areas of Family Law.

How children come through loss, divorce, and separation from the most important people in their lives is measured by how the adults closest to the children handle this deeply difficult and emotional time. Remember, children learn not only from what we tell them, but, more importantly, from what they see, feel, and experience.

### **The Troxel Decision**

In 2000, the United States Supreme Court heard the landmark case of *Troxel v. Granville*, 120 S. Ct. 2054 (2000). This case dealt with the fundamental right of a parent to make decisions concerning the care, custody, and control of their children. In *Troxel*, the Supreme Court affirmed a Washington State Supreme Court decision denying grandparents expanded visitation against the wishes of the children's mother. The Court also ruled that the Washington nonparental visitation statute was "breathtakingly broad." This statute stated "any person may petition the court for visitation rights at any time" [if it is the best interests of the child]. The U.S. Supreme Court said this statute was an unconstitutional violation of a parent's Fourteenth Amendment due process right.

The *Troxel* decision said further that all states must give "special weight" to a "fit" parent's determination of what is in his or her child's best interests when a visitation dispute arises between a parent and a third party. The Court said that in such disputes, the third party has the burden to prove that a request for visitation is in the child's best interest; whereas, a parent has no such burden of disproving that the visitation would be in the child's best interests.

The Court further instructed that each state must set forth a set of factors or guidelines for use in determining the best interests of children. Although the U.S. Supreme Court said these were the only necessary requirements, it recognized that individual states could determine whether any additional requirements may be included in their laws. Check with a family law attorney in your area to find out about any additional requirements in your state. Some states went far beyond what the US Supreme Court required and set forth conditions not called for in the *Troxel* decision. The bottom line, though, is families and courts must recognize that despite the reality that marriage and domestic relationships do end or break up, that is a fact, children should have the right to have a relationship with their family, as the child sees and knows their family, even if the adult who may now have custody/control over the child is no longer legally related to the important adults who are related to their children.

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